

Francis A. Montbach (FAM9631)  
Mound Cotton Wollan & Greengrass  
Attorneys for Third-Party Defendant  
Southwest Airlines Co.  
One Battery Park Plaza  
New York, NY 10004  
(212) 804-4200  
fmontbach@moundcotton.com

-----X  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
-----X

SANOFI PASTEUR, INC., f/k/a AVENTIS :  
PASTEUR, INC. and Cargo Insurers, :

Plaintiffs,

:

- against -

KUEHNE & NAGEL, INC.; KUEHNE & :  
NAGEL, S.A.; EXCLUSIVE :  
TRANSPORTATION :  
FOR INDUSTRY, INC.; CONTINENTAL :  
AIRLINES, INC., :

Defendants.

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KUEHNE & NAGEL, INC.,

Defendant and Third-Party Plaintiff,

- against -

SOUTHWEST AIRLINES CO.

Third-Party Defendant.

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ECF CASE

07 Civ. 6354 (BSJ)

**ANSWER TO  
THIRD-PARTY  
COMPLAINT OF  
KUEHNE &  
NAGEL, INC.**

Third-Party Defendant, Southwest Airlines Co. ("Southwest") by its attorneys, MOUND COTTON WOLLAN & GREENGRASS, as and for its Answer to the Third-Party Complaint of Kuehne & Nagel, herein, alleges:

FIRST: Denies each and every allegation contained in those paragraphs of the Third-Party Complaint designated "4", "6", "7" and "8" insofar as those paragraphs refer to Southwest.

SECOND: Denies knowledge or information sufficient to form a belief as to the allegations contained in that paragraph of the Third-Party Complaint designated "5",

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

THIRD: Any damages allegedly suffered by the plaintiff herein resulted from the acts and/or omissions of certain third parties for whose conduct this defendant is not responsible.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

FOURTH: The contract of carriage embarked upon by the plaintiff herein was an international transportation and as such was governed, controlled and made subject to the terms and provisions of the air waybill contract of carriage, tariffs and/or the Warsaw Convention, as amended, if applicable.

FIFTH: That under the applicable provisions of the air waybill contract of carriage, tariffs and/or the Warsaw Convention, as amended, if applicable, this third-party defendant has no liability to the plaintiff or to any other person under the contract of carriage for any loss, damage or delay unless the loss, damage or delay is shown to have resulted from the negligence of this third-party defendant.

SIXTH: Upon information and belief, this third-party defendant is not guilty of any negligence and has taken all necessary measures to avoid any loss, damage or delay under the contract of carriage.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

SEVENTH: That under the applicable provisions of the air waybill contract of carriage, tariffs and/or the Warsaw Convention, as amended, if applicable, this third-party defendant has no liability to the plaintiff or to any other person under the contract of carriage for any loss, damage or delay where such loss, damage or delay is shown to have been caused by or contributed to by the negligence or fault of the plaintiff, its agents, servants and/or employees.

EIGHTH: Upon information and belief, any loss, damage or delay was caused by or contributed to by the plaintiff, its agents, servants and/or employees.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

NINTH: That under the applicable provisions of the air waybill contract of carriage, tariffs and/or the Warsaw Convention, as amended, if applicable, this third-party defendant has no liability to the plaintiff or to any other person under the contract of carriage for any loss, damage or delay unless a written notice of claim concerning such loss, damage or delay is filed within the applicable time limit.

TENTH: Upon information and belief, the proper written notice of claim concerning such loss, damage or delay was not filed within the applicable time limit.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

ELEVENTH: That under the applicable provisions of the air waybill contract of carriage, tariffs and/or the Warsaw Convention, if applicable, this third-party defendant has no liability to the plaintiff or to any other person under the contract of carriage for any loss, damage or delay in

that it performed each and every obligation and duty required of it under the contract of carriage and delivered the shipment to the proper party in the same order and condition as received.

**AS AND FOR SIXTH AFFIRMATIVE DEFENSE**

TWELFTH: That under the applicable provisions of the air waybill contract of carriage, tariffs and/or the Warsaw Convention, if applicable, this third-party defendant has no liability to the plaintiff or to any other person under the contract of carriage for any consequential and/or special damages arising out of or in any way connected with the loss, damage or delay under the contract of carriage.

THIRTEENTH Upon information and belief, the damages allegedly suffered by the plaintiff herein are of a consequential and/or special nature.

**AS AND FOR SEVENTH AFFIRMATIVE DEFENSE**

FOURTEENTH: That under the applicable provisions of the air waybill contract of carriage, the applicable tariffs and/or the Warsaw Convention, if applicable, the liability, if any, of Southwest Airlines Co. for any loss, damage or delay is limited.

**AS AND FOR EIGHTH AFFIRMATIVE DEFENSE**

FIFTEENTH: The complaint should be dismissed for its failure to name an indispensable party or parties.

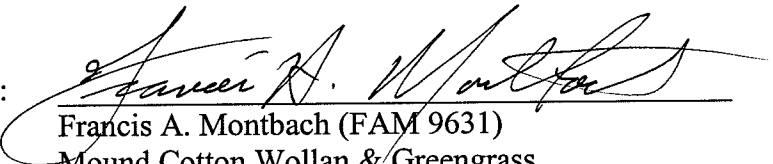
**AS AND FOR NINTH AFFIRMATIVE DEFENSE**

SIXTEENTH: That this defendant acted as an agent of disclosed principles, co-defendants Kuehne & Nagel, Inc. and Exclusive Transportation for Industry, Inc., and, as such, is not personally liable on the contract(s) between the disclosed principles and plaintiff herein.

WHEREFORE, Third-Party Defendant, Southwest Airlines Co., demands judgment against the Third-Party Plaintiff Kuehne & Nagle, Inc., dismissing this action; together with costs and disbursements.

Dated: New York, New York  
March 7, 2008

MOUND COTTON WOLLAN & GREENGRASS  
Attorneys for Third-Party Defendant  
Southwest Airlines Co. and  
Defendant, Continental Airlines, Inc.

By:   
Francis A. Montbach (FAM 9631)  
Mound Cotton Wollan & Greengrass  
One Battery Park Plaza  
New York, New York 10004  
(212) 804- 4200  
fmontbach@moundcotton.com

TO:

Ernest H. Gelman, Esq.  
350 Fifth Avenue, Suite 4908  
New York, NY 10118  
Attorney for Defendant Kuehne & Nagel, Inc.

David L. Mazaroli, Esq.  
11 Park Place, Suite 1214  
New York, NY 10007-1214  
Attorney for Plaintiffs Sanofi Pasteur, Inc. et al.

Schindel, Farman, Gardner & Rabinovich, LLP  
14 Penn Plaza, Suite 500  
New York, NY 10122  
Attorneys for Defendant Exclusive Transportation for Industry, Inc.

AFFIDAVIT OF SERVICE

STATE OF NEW YORK     )  
                                  )  
COUNTY OF NEW YORK    )     ss.:

Marian Kelly, being duly sworn, deposes and says:

Deponent is not a party to this action, is over the age of 18 years, and resides in Maywood, New Jersey. That on the 7th day of March, 2008 deponent served the within ANSWER TO THIRD-PARTY COMPLAINT upon:

ERNEST GELMAN, ESQ.  
350 Fifth Avenue - Suite 4908  
New York, NY 10118

DAVID A. MAZAROLI, ESQ.  
11 Park Avenue - Suite 1214  
New York, NY 10007-2801

SCHINDER, FARMAN, LIPSIOUS, GARDNER & RABINOVICH, LLP  
14 Penn Plaza - Suite 500  
New York, NY 10122

at the addresses designated by said attorneys by depositing the same enclosed in a postpaid properly addressed wrapper directed to each of said attorneys at the above addresses in an official depository under the exclusive care and custody of the US Postal Service within the State of New York.

  
Marian Kelly

Sworn to before me this  
7th day of March, 2008.

  
Notary Public

IRENE SIEGEL  
Notary Public State of New York  
No. 41-4872330  
Qualified in Queens County  
Commission Expires October 14, 2010